

REMARKS

Applicants respectfully request reconsideration of the present application in view of the reasons that follow. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

No claims are being amended, added, or cancelled. Accordingly, claims 1-17 remain pending in this application.

35 USC §101 Rejections

In the §101 section of the Office Action, the Examiner rejected claims 1-17 under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Examiner argued that “computer readable storage medium” is not defined in the specification. The Examiner argues that the context the medium was used in the claims would fairly suggest to one ordinary skill signals or other forms of propagation and transmission media, typewritten or handwritten text on paper, or other items failing to be an appropriate manufacture under 35 U.S.C. §101 in the context of computer-related inventions.

Applicants have amended claim1 to recite a “computer readable hardware storage medium” to address the Examiner’s concern that the medium as defined in the specification encompasses signals or other forms of propagation and transmission media. Claims 2-17 depend from claim 1 and should be considered statutory for the same reason. Reconsideration and withdrawal of the rejection of claims 1-17 under 35 U.S.C. §101 is respectfully requested.

35 USC §103 Rejections

In the §103 section of the Office Action, the Examiner maintained the rejection of claims 1-3 and 6-10 under USC §103(a) as being anticipated by U.S. Patent No. 6,357,008 to Nachenberg (hereinafter "Nachenberg") in view of Christodorescu "Detecting Malicious Patterns in Executables via Model Checking" University of Wisconsin, July 12, 2002, page 1-15 (hereinafter "Christodorescu"). In response to Applicant's argument that Christodorescu is not prior art, the Examiner stated that "[t]he printed date on Christodorescu 12,2002 qualifies it as prior art. If the date on the publication is not the date that was made available to the public, applicant needs to file an Affidavit of Declaration." The requested Declaration is attached hereto.

Christodorescu Reference is not Prior Art

The date cited by the Examiner and appearing on the face of Christodorescu is not a date that the reference was available to the public. The reference is not prior art to the present application. In order to overcome the Examiner's rejection, Applicants file herewith the Declaration of Mihai Christodorescu, an inventor of the above-identified application, under 37 CFR § 1.131. In the attached Declaration, inventor declares that the first public disclosure of Christodorescu was after July 29, 2002, the filing date of the present application, and that the date on the reference is not the date that the presentation was made publicly available. (Declaration, Para. 5).

As previously stated by the Applicant, in Nachenberg, the original executable program is executed in a virtual environment. The original executable program cannot be considered a logically equivalent standardized version since this executable is neither logically equivalent nor standardized as recited in claim 1 and described in the present application. Accordingly, Nachenberg does not teach nor suggest all of the elements of claim 1. This deficiency cannot be cured by Christodorescu since this reference is not prior art.

In view of the foregoing, it is believed that Applicant has established invention of the subject matter of the claims in the pending application prior to the public availability of the Christodorescu reference. Reconsideration and allowance of claim 1 is respectfully requested.

Dependent Claims 2-3 and 6-10

Claims 2-3 and 6-10 depend from claim 1 and include all of the limitations thereof.

These claims are allowable for at least the same reasons as the independent claims from which they depend. Reconsideration and allowance of claims 2-3 and 6-10 is respectfully requested.

Claims 4-5 and 11-17

Also in the §103 section of the Office Action, the Examiner rejected claims 4-5 and 11-17 under USC §103(a) as being unpatentable over Nachenberg in view of Christodorescu and further in view of U.S. Patent No. 7,188,369 to Ho, et al. (hereinafter "Ho"). The Examiner stated that Ho discloses "wherein the standardized version maps instructions of the suspect program to corresponding standard synonym instructions." (citing Ho, col. 5, line 25 – col. 6, line 40) Applicants respectfully disagree and traverse the rejection of the Examiner.

Claims 4-5 and 11-17 depend from claim 1 and includes all of the limitations thereof. Ho does not cure any of the above noted deficiencies of Nachenberg and Christodorescu. Accordingly, these claims are allowable for at least the same reasons as the independent claims from which they depend. Reconsideration and allowance of claims 4-5 and 11-17 is respectfully requested.

Conclusion

Applicants believe that the present application is in a condition for allowance. Applicants appreciate consideration of the above remarks and invites that the Examiner to telephone the undersigned in the event a telephone discussion would be helpful in advancing the prosecution of

Response to Office Action Mailed April 4, 2008

Inventors: Christodorescu, et al.

U.S. Ser. No. 10/629,292

Page 9 of 9

the present application. The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1170.

Respectfully submitted,

September 30, 2008

By


Michael S. Brayer

Reg. No. 51,495

Attorney for Applicant

BOYLE FREDRICKSON, S.C.

840 N. Plankinton Ave.

Milwaukee WI 53203

(414) 225-6305